



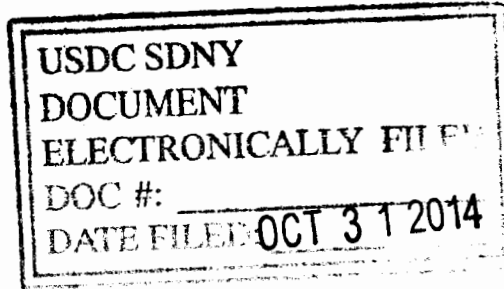
MARKS & KLEIN, LLP

JUSTIN M. KLEIN
justin@marksklein.com
Admitted New Jersey and
New York

October 31, 2014

**VIA ELECTRONIC FILING AND
FACSIMILE (212-805-0426)**

Honorable Laura Taylor Swain
United States District Court for
the Southern District of New York
500 Pearl Street
New York, New York 10007



63 Riverside Avenue
Red Bank, NJ 07701
T: (732) 747-7100
F: (732) 219-0625
www.marksklein.com

**Re: Mister Softee, Inc. v. Dimitrios Tsirkos
Civil Action No.: 14-cv-01975-LTS**

RECEIVED

Dear Judge Swain:

The undersigned and the law firm of Marks & Klein, LLP represent Defendant Dimitrios Tsirkos ("Defendant" or "Tsirkos") in the above-referenced matter. I write regarding fact discovery in this matter and, in particular, to request an extension of the non-expert discovery deadlines. As Your Honor is aware, the non-expert discovery deadline was September 22, 2014. On September 23, 2014, Your Honor extended that deadline through and including November 12, 2014. [Dkt. No. 127].

Although the parties have been diligent in working towards completing discovery, it is clear that the parties will be unable to complete non-expert discovery on or before November 12, 2014. While Plaintiffs did serve written responses and produce a disc containing documents, Defendant has not reviewed same on account of an agreement amongst counsel. Specifically, on October 16, 2014, Defendant's counsel agreed to not review Plaintiffs' written responses and/or production as a condition of receiving an extension to provide Defendants' discovery responses. Defendants' responses are currently due on Friday, October 31, 2014. Moreover, the parties will likely need to take *at least* six party witness depositions. Further, Defendant is in the process of serving document production subpoenas on eleven (11) third-party individuals in relation to this case. The third-parties' responsive documents are due to Defendant's counsel's office on or before November 5, 2014 at 10:00 a.m. Assuming that each third-party subpoena recipient complies with the subpoenas, which may be unlikely, that would leave the parties with only one (1) week to review the responsive documents and, to the extent necessary, subpoena those third-parties for deposition. In addition, certain Counsel for Defendant are preparing for an arbitration before the American Arbitration Association, which is to commence in Atlanta, Georgia on November 10, 2014. Respectfully, it is a physical impossibility to complete all above the above-outlined discovery on or before November 12, 2014.

Notably, this firm only recently substituted in as counsel for Defendant and has spent the last six weeks becoming acquainted with the file and, moreover, reviewing the numerous (and

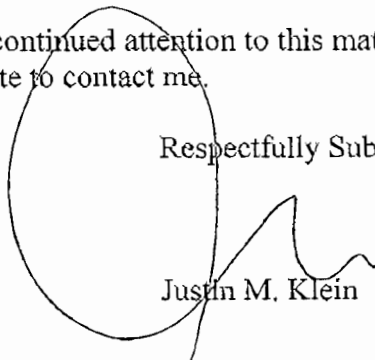
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voluminous) filings by Plaintiffs' counsel. Accordingly, Defendant respectfully requests the non-expert discovery deadline be extended through and including January 12, 2014 to give the parties enough time to complete outstanding discovery and depositions.

Plaintiffs' counsel has advised that Plaintiffs have no objection to this request. Only one (1) prior extension of the discovery period was granted. [See Dkt. No. 127].

I thank the Court for its continued attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.


Respectfully Submitted,


Justin M. Klein

cc: All Counsel of Record (via ECF)
Clients (via electronic mail)

*The requested extension is granted.
DE #133 resolved.*

SO ORDERED:

 10/31/14
HON. LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE